O/Essential Commodities/49

1949

File No. 53/49

Legal Department

G. BRANCH

Subject:—

Opinion on the Bombay Essential Commodities Cattle (Control) Act, 46.

1949.

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O/Essential Commodities/49

File No. 53/49

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C O N T E N T S.

Legal Department File No. 0. Essential Commodities / 49.

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2.	G-275 9-4-1949.	Section 4(2)(f) Whether prices for firewood or charcoal could be fixed without imposing the Control order as a whole on the Kanara District .-	7-8
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Cotton seed has since been included as an essential commodity in the Central Act namely , the Essential Supplies (Temporary Powers), Act, 1946.

17-20

S. C. 30/7
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Office of the R.L.A.

The view taken by the Assistant Director of Civil Supplies (Charcoal and firewood) in his note dated 1st March 1949 is correct. Sub-clause (iii) of Clause 1 of the Bombay Charcoal and Firewood Trade Licensing Order, 1949 provides that the said Order shall come into force in any local area on such date as the Provincial Government may by Notification in the official Gazette appoint in this behalf. If the intention was that any part of the order could be brought into force in any area, the words used would have been "all or any of the provisions of this Order". In the absence of such provision it would be reasonable to construe that the order as a whole should be brought into force.

The District Magistrate, Kanara has power to control prices under Section 4(2)(f) of the Bombay Essential Commodities and Cattle (Control) Act read with Governmen Notificat on, G.C.D. No. 605/Est. dated 18th December 1946, and he can issue an Order controlling the prices of charcoal and firewood in his district without the Bombay Charcoal and Firewood Trade Licensing Order being applied thereto.

Sd/- P.M.Lad
8-4

Remembrancer of Legal Affairs.

U.O.R. to C.S.D. No. C-275 , dated 9-4-49

Office of the R.L.A.

In his opinion No. 9458 dated 7-10-48, it was made by the R.L.A. in respect of bricks which is an essential commodity under the Bombay Essential Commodities and Cattle (Control) Act, 1946 that there is no provision in the Bombay Essential Commodities and Cattle (Control) Act, 1946 on the lines of Rule 75A of the Defence of India Rules which contained a specific provision for requisitioning moveable property under certain circumstances and the only power which comes nearer to the requisitioning is that contained in clause (d) of sub-section (2) of Section 4 of the Bombay Essential Commodities and Cattle (Control) Act 1946, under which an order can be made requiring any person holding stocks of an essential commodity ø to sell them at specified prices to a specified person or class of persons. That opinion applies to the present case and an order of that kind can be made.

Sd/- P.M.Lad
16-3

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U.O.R. to C.S.D.(Bureau), No. G- 221
dated 16-3-1949.

S.C. 20/3

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The Civil Supplies Department has raised the question whether any suit would lie against Government for compensation if the merchants of Panch Mahxa Mahals whose grass has been frozen by the District Magistrate and which is now proposed to be purchased by Government at a specified price, feel aggrieved at the purchase price fixed by Government.

It is not quite clear under what provisions of law the District Magistrate, Panch Mahals, has frozen the grass. On the assumption that the preezing order was validly made, Government or the District Magistrate can make an order under section 4(2)(d) directing the merchants to sell grass to specified persons of specified prices. (Please see R.L.A .'s opinion No. G-221, dated 18-3-49). Sub-section (2) of section 15 of the Bombay Essential Commodities (Control) Act, 1946, provides that no suit or other legal proceeding shall lie against the Crown for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made under section 4. A thing shall be deemed to be done in good faith where it is in fact done honestly. If, however, the price fixed be unreasonable, that may furnish a valid ground for inferring bad faith. Care should, therefore, be taken to ensure that the price is not unreasonable, having regard to all relevant circumstances.

Sd/- P.M.Lad
8-4

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. G-276 , dated the 9th April 1949

Office of the R.L.A.

The question for consideration is whether the Collector of Thana can under Section 4(1)(b) of the Bombay Essential Commodities and Cattle (Control) Act, 1946 read with C.S.D. notification No. 805/Estt. dated 18th December 1946 issue an order directing the charcoal dealers in Thana to cover and keep covered their stocks of charcoal during monsoon.

The proposed order cannot be issued under Section 4(2)(b) of the Bombay Essential Commodities and Cattle (Control) Act as the words "or otherwise" in the said Clause are likely to be construed ejundem generia with the words "licence or permit ". Such an order can, however, be issued by the Provincial Government under Section 4(1) of the said Act. The power to issue orders to control production, supply and distribution is conferred by Sub-section (1) of Section 4 and sub-section (2) of that section is merely an illustrative one. The provisions of sub-section (2) are not restrictive of sub-section (1) as indeed is expressly stated by the words "Without prejudice to the generality of powers conferred by sub-section (1) ". (Emp. Vs. Sibnath Banerji (P.C.) 48 BLR 1 at p. 7) Regulating storage would come under regulating supply for maintaining such supply and the proposed order wouldfall under sub-section (1) of section 4. Under G.N., C.S.D. No. 805/Estt. dated 18th December 1946 only the powers to make orders in respect of matters specified in clauses (b) to (j) of sub-section (2) of Section 4 have been delegated to the District Magistrates . The proposed orders will have therefore to be issued by the Provincial Government.

Sd/-P.M.Lad
1-6
Remembrancer of Legal Affairs.

U.O. to C.S.D.(Charcoal)No. G-421, dated 2-6-49

Office of the R.L.A.

Section 6(1)(a) of the Bombay Essential Commodities and Cattle (Control) Act, 1946 requires the Order itself to be published although the manner of such publication can be prescribed by rules. Consequently it would not be legal to modify the rules providing for the publication of the substance of an Order and not the Order itself. Even otherwise it is essential that the Order should be known to the public in the entirety; the law should be made known to the public in a precise form as so as to fasten knowledge. That purpose cannot be served by publishing only the substance of the Order.

Sd/- P.M.Lad
27-6

Remembrancer of Legal Affairs.

U.O.R. to C.S.D No. G-475 , dated 27-6-49

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Legal Department.

There is no provision in the Bombay Essential Commodities and Cattle (Control) Act, 1946, which shows that it applies to Government. Any officer of Government dealing in groundnut oil cakes under the orders of Government is not, therefore, bound by the oil Cake Order and no licence is necessary in his case for the discharge of his duties.

Sd/- J.R.Dhuranidhar
26-5

Additional Secretary to Government.

U.O.R. to A.R.D.D. No. G-405 , dated 26-5-49 .

S.C. 30/7
4 copies.

Office of the R.L.A.

The question for the R.L.A.'s consideration is whether it is necessary to delete the entry "Cotton Seed" from Schedule 1 of the Bombay Essential Commodities and Cattle (Control) Act, 1946, by reason of the fact that Cotton Seed has since been included as an essential commodity in the Central Act, namely, the Essential Supplies (Temporary Powers) Act, 1946.

2. When the Bombay Essential Commodities and Cattle (Control) Act, 1946 was passed in 1946, it included in Schedule 1 "Cotton Feed" as an essential commodity. That was entry II in Schedule I. Entry 11 of this Schedule was substituted in 1949 by Government notification Civil Supplies Department No. 136/1 dated the 21st January 1949 by another entry, but "Cotton Seed" was retained by that notification.

3. The India (Central Government and Legislature) Amendment Act, 1949, which amended the India (Central Government and Legislature) Act, 1946, inserted "Cotton Seed" in clause (a) of section 2 of the parent Act giving thereby the ~~xxxxx~~ power to the Indian Legislature to make laws with respect to that matter. Consequently, a Central Ordinance was passed, No. XIV of 1949, by which "Cotton Seed" was inserted in section 2 of the Essential Supplies (Temporary Powers) Act, 1946, as one of the essential commodities. By virtue of sub-section (4) of section 2 of the India (Central) Government and Legislature) Act, 1946 "Cotton-Seed" became a matter as if it were specified in Part II of the concurrent Legislative List. Sub-section (4) of section 2 of the Parliamentary Act just referred to provides that sub-section (2) of

... of the Government of India Act, 1935,

...l apply in relation to a law enacted by virtue of section 2 with respect to any matter, being a matter with respect to which a Province has power to make laws as if that matter were a matter specified in Part II of the Government Legislative List. Sub-section (2) of Section 107 of the Government of India Act, 1935 provides that where a Provincial law with respect is one of the matters enumerated in the Concurrent Legislative list contains any provision repugnant to the provisions of the earlier Dominion law or an existing law with respect to that matter, then if the Provincial law having been reserved for the consideration of the Governor General has received the assent of the Governor General , the Provincial law shall in that Province prax prevail, but nevertheless the Dominion Legislature may at any time enact further legislation with respect to the same matter. The Provincial law in this case, namely, the Bombay Essential Commodities and Cattle (Control) Act, 1946, which included "Cotton Seed" as one of the essential commodities did not contain, when enacted, any provision repugnant to the provisions of an earlier Dominion Law or an existing law with respect to "Cotton Seed" as a matter falling in the Concurrent Legislative List, and, therefore, when the Provincial law was enacted there was no question of re erving it forthe consideration of the Governor General. Section 107(2) of the Government of India Act has been no application to the Bombay Act and that being so, the Bombay Essential Commodities and Cattle (Control) Act, 1946, is not rendered void on account of any repugnancy between that Act and the Central law, namely, the Essential Supplies (Temporary Powers) Act, 1946. It therefore, follows that no deletion of "Cotton Seed" from entry 11 in Schedule 1 ofthe Bombay Act is necessary, The

question as to how to ~~resolve~~ resolve a conflict, if any arises between an order which the Central Government may hereafter promulgate with respect to Cotton Seed and an order of the Provincial Government issued under the Bombay Essential Commodities and Cattle (Control) Act, 1946, if any, is left open in this opinion.

Sd/- P.M.Lad
17-11

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. G- 659 dated the 18th November 1949.

S.C. 30/7
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